

May 19, 1998

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL

SUBJECT: Department of Natural Resources, Water and Land Resources Division File No. **E97CT069**
Proposed Ordinance No. **98-085**

Open Space Taxation (Public Benefit Rating System) Application of
VLAD AND JEAN USHAKOFF
4753 Preston-Fall City Road, Fall City, WA 98024

Location: 4753 Preston-Fall City Road, Fall City, Washington

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve, subject to conditions
Department's Final:	Approve, subject to conditions (modified)
Examiner:	Approve, subject to conditions (modified)

PRELIMINARY MATTERS:

The Department of Natural Resources, Water and Land Resources Division Preliminary Report on Item No. E97CT069 was received by the Examiner on March 3, 1998.

PUBLIC HEARING:

After reviewing the Department of Natural Resources, Water and Land Resources Division Report and examining available information on file with the application, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. E97CT069 was opened by the Examiner at 10:30 a.m., March 17, 1998, in Hearing Room No. 2, Department of Development and Environmental Services, 900 Oakesdale Avenue SE, Renton, Washington, and adjourned at 10:45 a.m. The hearing record was administratively continued to allow the Applicant to expand the application to include agricultural credit. The hearing record closed May 15, 1998.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner: Vlad and Jean Ushakoff, 4753 Preston-Fall City Road, Fall City, WA 98024
 Location: 4753 Preston-Fall City Road, Fall City, Washington

Acreage:	Property Total:	6.17 acres
	Application:	1.61 acres
	Revised Application:	4.70 acres
	Recommended:	1.61 acres
	Revised Recommendation:	4.70 acres

Zoning: UR, POTR4

STR: SW-SE-15-24-07

Subject of Request: Priority Resources:

- Aquifer protection area
- Surface water quality buffer area
- Significant plant, wildlife, or salmonid habitat area
- Farm and agricultural conservation land
- Public lands and right-of-way buffers
- Special animal sites

Public Access:

- Unlimited public access

2. The Department initially recommended not granting PBRs credit for “farm and agricultural conservation land” because the application was lacking the requisite farm plan. However, at the hearing, the Applicant indicated a desire to complete the required plan. For that reason, the hearing record was administratively open until May 15, 1998 in order to allow the Applicant opportunity to amend the application.

As a result of the amended application the acreage subject to this review increased from 1.61 acres to **4.70 acres**. The Department’s recommended PBRs credit increases from 18 points to **23 points**. Before the amendment, the application merited a 70% reduction from market value; after the amendment, an **80% reduction**.

2. Except as modified herein, the facts set forth in the King County Department of Natural Resources, Water and Land Resources Division Preliminary Report to the King County Hearing Examiner for the March 17, 1998 public hearing are found to be correct and are incorporated herein by this reference. Copies of the said Report will be attached to the copies of this Report submitted to the King County Council.

3. Jean Ushakoff testifies that she has read, understands and agrees to the Department's recommended conditions of approval.

CONCLUSIONS:

1. Approval of current use valuation for 4.70 acres of the subject property, pursuant to the Public Benefit Rating System adopted by King County Ordinance No. 10511, would be consistent with the purposes and intent of King County to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of King County and its citizens.
2. Timely application has been made to King County for the current use valuation of the subject property to begin in 1999. Notice of said application was given in the manner required by law.
3. The subject property contains priority open space resources and is entitled to bonus points pursuant to the King County Public Benefit Rating System, which justify a total award of 23 points. The resulting current use value is 20% of market value for 4.70 acres of the subject property.

RECOMMENDATION:

APPROVE the request of Vlad and Jean Ushakoff for current use valuation of 20% of market value for 4.70 acres of the subject property, subject to the conditions recommended in the Department of Natural Resources report for the March 17, 1998 public hearing and the following conditions:

1. The applicant shall provide to the King County Assessor a legal description, or adequate information to enable the Assessor to develop a legal description, of the improved portion of the property which shall remain assessed at 100% of market value, and the portion of the subject property (4.70 acres) which shall be assessed at its current use valuation.
2. Current use valuation shall be subject to all terms and conditions of RCW 84.34 and King County Code Chapter 20.36, as the same may be amended from time to time, and all regulations and rules duly adopted to implement State law and County ordinances pertaining to current use valuation.
3. The applicant shall sign an agreement which accepts the conditions of approval set forth herein and meets the requirements of WAC 458-30-240. The signed agreement shall be returned to the Office of the King County Hearing Examiner prior to the close of business on December 31, 1998, or within thirty (30) days of transmittal of a proposed agreement to the applicant, whichever is later. The following conditions shall be specifically set forth in the agreement:
 - (1) Failure of the owner to comply with these conditions shall be basis for removal, by King County, of the current use designation, in which case the land shall be subject to the penalty, tax, and interest provisions of RCW 84.34 and assessed at true and fair value. The County Assessor and the Water and Land Resources Division may reevaluate the property to determine whether removal of the open space designation is appropriate. Removal shall follow the process in RCW 84.34.108.

- (2) Revisions to this agreement may only occur upon mutual written approval of the owner and granting authority.
- (3) The open space classification for this land will continue as long as it is primarily devoted to and used for the purpose of protecting open space. Classification will be removed if dedication to this purpose ceases to exist. A change in circumstances which diminishes the extent of public benefit from that generally outlined in the Water and Land Resources Division Preliminary Report to the King County Hearing Examiner will be cause for removal of the current use assessment classification. It is the owner's responsibility to notify the Assessor of a change in circumstance.
- (4) When a portion of the open space land is withdrawn or removed from the program, the Water and Land Resources Division and the Assessor shall reevaluate the remaining land to determine its continued qualification under the program. If the remaining portion meets the criteria for priority resources, it may continue under current use taxation.
- (5) Except as otherwise stated in this agreement, there shall be no alteration of the open space land or resources. Any alteration may constitute a change of use and subject the property to the additional tax, interest, and penalty provisions of RCW 84.34.080. "Alteration" means any human-induced action that adversely impacts the existing condition of the open space land or resources including but not limited to the following:
 - a. erecting structures;
 - b. grading;
 - c. filling;
 - d. dredging;
 - e. channelizing;
 - f. modifying land or hydrology for surface water management purposes;
 - g. cutting, pruning, limbing or topping, clearing, planting, introducing, relocating or removing vegetation, however, selective cutting may be permitted for firewood;
 - h. applying herbicides or pesticides or any hazardous or toxic substance;
 - i. discharging pollutants except stormwater;
 - j. paving, construction, application of gravel;
 - k. storing of equipment, household supplies, play equipment, or compost;
 - l. engaging in any other activity that adversely impacts the existing vegetation, hydrology, wildlife, wildlife habitat, or other open space resource.
 - m. (Walking, horseback riding, passive recreation or actions taken in conjunction with a resource restoration plan, or other similar activities are permitted.)
- (6) Subject to the conditions and restrictions set forth in Section 5, the following uses, activities and alterations are permitted, following receipt of written approval as set forth below:
 - a. In areas that have become infested by noxious weeds, the owner shall submit a control and enhancement plan to the King County Water and Land Resources Division and local jurisdiction for approval prior to removing the weeds.

- b. In areas invaded by non-native invasive species, replacement with native species or other appropriate vegetation may be allowed subject to approval of an enhancement plan by the King County Water and Land Resources Division.
 - c. Trees posing a hazard to structures or major roads may be removed. Any trees removed must be replaced.
- (7) There shall be no motorized vehicle driving or parking allowed on the open space land with the exception of along driveways.
- (8) Grazing of livestock shall be prohibited on any portion of the open space land which is not approved as agricultural.
- (9) For land classified as farm and agricultural conservation land, activities which are consistent with farm or agricultural uses shall be permitted as long as those activities do not conflict with limitations required by other awarded categories.

RECOMMENDED this 19th day of May, 1998.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 19th day of May, 1998, to the following parties and interested persons:

Vlad/Jean Ushakoff
4753 Preston-Fall City Road
Fall City, WA 98024

Ted Sullivan
DNR

Kelly Heintz
DNR

Ann McTavish
MKCC

Charlie Sundberg
Cultural Resources

George Kritsonis
Department of Assessments

NOTICE OF RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) *on or before June 2, 1998*. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before June 9, 1998*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty (20) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE MARCH 17, 1998 PUBLIC HEARING ON DEPARTMENT OF NATURAL RESOURCES FILE NO. E97CT069 –VLAD AND JEAN USHAKOFF:

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Jean Ushakoff and Kelly Heintz/DNR.

On March 17, 1998 the following exhibits were offered and entered into the hearing record:

Exhibit No. 1 through 3	<i>not offered</i>
Exhibit No. 4	Department of Natural Resources, Water and Land Resources Division Preliminary Report to the King County Hearing Examiner for the April 27, 1998 public hearing
Exhibit No. 5	Legal notice to council
Exhibit No. 6	Introductory Ordinance to council
Exhibit No. 7	Affidavit of Publication
Exhibit No. 8	Notification to Applicant of hearing sent
Exhibit No. 9	Application Signed/Notarized
Exhibit No. 10	Legal description
Exhibit No. 11	Legal description of designated open space
Exhibit No. 12	Assessor map
Exhibit No. 13	King County situs report
Exhibit No. 14	King County assessors database
Exhibit No. 15	Site map
Exhibit No. 16	Arcview map
Exhibit No. 17	Notice of hearing, Office of Hearing Examiner

On May 15, 1998 the following exhibits were entered into the hearing record:

Exhibit No. 11a	<i>Revised</i> Legal description of designated open space
Exhibit No. 15a	Revised Site map